

# DECLARATION OF TRUST FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST

1. Name and Purpose of the Trust.

(a) The trust shall be known as the **The Massachusetts Public Shade Tree Trust** and referred to herein as the **Trust**.

(b) The purpose of the **Trust** is to establish a trust for the benefit of the towns, cities, and municipalities of the Commonwealth of Massachusetts (Municipalities) listed in the “Schedule of Beneficiaries” at “Attachment A” as it exists and as it is amended in order to carry out the intent of the organizers as described in Sections 6 and 8 below.

2. Organizers of the Trust. The individuals whose names appear below as “Organizers” shall be known collectively as the “Organizers” of the Trust. The Organizers acknowledge that they have organized the Trust at their own expense. However, at the sole discretion of the Trustee, the Trust may reimburse the Organizers for reasonable organizational expenses.

3. Situs of the Trust. The situs of the Trust or of the Trustee may be moved, at the discretion of the Trustee, in order to avoid liabilities because of civil unrest, natural disasters or changes in economic or legal framework which would or may impair or impede the timely or cost-effective accomplishment of the purposes of the Trust.

4. Authority of the Trust. The Organizers shall be responsible for obtaining approval of the Trust by the Norfolk County Probate Court for the Commonwealth of Massachusetts which court shall be referred to as the “Court”, and an order from which shall be referred

to as a Court Order. Pursuant to any applicable Court Order the Trust shall be administered and operated pursuant to this Declaration of Trust, which has been reviewed and approved by all parties executing this Declaration of Trust. All parties executing this Declaration of Trust understand that the Trust shall be subject to the continuing jurisdiction of the Norfolk County Probate Court.

5. Corpus of the Trust. The corpus of the Trust (the Corpus) shall include:

(a) All sums transferred to the Trust for its initial formation, and such additional amounts as may later be contributed;

(b) All sums transferred to the Trust pursuant to a court approved settlement with any of the parties described within **Exhibit 4** (as it currently exists or may exist at a later date) where both the Trust and its Beneficiaries relinquish their rights to bring future legal action against such party (hereinafter, all parties described within Article 5(b) and Article 5(c) are individually and collectively referred to as the "Transferors");

(c) All sums transferred to the Trust pursuant to the Court Order establishing the Trust or pursuant to future orders of the Court, being amounts paid by any of the parties described within **Exhibit 4** (as it currently exists or may exist at a later date), by settlement in any legal action or potential action or judgment in any legal action;

(d) All sums, rights, interests, or claims and similar thing of every kind, nature and description granted, transferred, or assigned to the Trust or otherwise belonging to the Trust; and

(e) All income derived from any of the above assets of the Trust.

6. Beneficiaries of the Trust/Intended Scope.

a) The beneficiaries of the Trust constitute the Municipalities described on the “Schedule of Beneficiaries” at “**Attachment A**” as it exists and as it is amended. It is the intent of the Organizers that the Schedule of Beneficiaries includes the Municipalities in the Commonwealth of Massachusetts whose public shade trees have suffered damage from the leakage of natural gas from a natural gas pipeline owned, maintained, or serviced by a third party or parties (hereinafter such damage shall be referred to as “damage to Public Shade Trees due to natural gas leakage”).

b) In order for a Municipality to be listed on the Schedule of Beneficiaries to receive benefits under the Trust the following is required:

- 1) The Municipality must be a Municipality described in Section 6(a) above;
- 2) The Municipality must execute this Trust as its free act and deed and agree to abide by its terms; and
- 3) The Municipality must transfer to the Trust any rights or claims that it may have against any of the parties listed or to be listed in **Exhibit 4** by executing an assignment of such rights or claims as set forth in **Exhibit 6**.

c) Each Beneficiary agrees to cooperate with all other Beneficiaries, and the Trustee and Administrative Trustee each agree to mutually cooperate with all

Beneficiaries and not to favor any one Beneficiary. Each Beneficiary understands that Trust assets are to be distributed in accordance with the "Distribution Plan" which shall be drawn up and submitted to the Court for approval in accordance with the terms of this Trust. Each Beneficiary agrees to share the Corpus of the Trust in accordance with and support and abide by the terms of the "Distribution Plan" as set forth within **Exhibit 5** as approved by the Court.

d) All Beneficiaries further agree that although they wish the Trust to be formed and wish to participate in this cooperative effort, each will be free to leave the Trust at any time upon written application to the Court. However, if any Beneficiary leaves the Trust prior to the Trust obtaining a recovery from any person listed on **Exhibit 4** through a release of any claims of that Beneficiary to such person listed on **Exhibit 4** as part of any settlement or the Trust obtaining a recovery from such party listed on **Exhibit 4** through the resolution of such claims through settlement, judgment, execution, or otherwise, and such Beneficiary later obtains a recovery by settlement, judgment, or other resolution from such party listed on **Exhibit 4**, such Beneficiary shall be responsible to repay the Trust an amount equal to a pro rata share of the Trust's attorneys fees and costs as of the date of the Beneficiary's application to withdraw as a Beneficiary. Such Beneficiary acknowledges that the Trust shall have a lien upon any such recovery of the Beneficiary, and the Trustee shall be empowered to collect such amounts in quantum meruit under Article 13.06. The repayment obligation can be waived if the Trustee makes a finding that it is in the interest of the Trust to do so and the waiver is approved by the Court. Upon a Beneficiary's application to leave the Trust being approved by the Court, the Trustee shall execute a conveyance of the Beneficiary's rights back to the Beneficiary by an appropriate written document.

7. Voting by Beneficiaries.

7.01. Nature of Voting. Although the Trustee shall have the powers and authorities described herein, all subject to the supervision of the Court, Beneficiaries shall have voting rights, and to that extent shall serve in an advisory capacity to the Trustee, all as herein provided. Specifically, Beneficiaries shall have voting rights with respect to: (a) the selection of counsel for the Trust; (b) the termination of counsel for the Trust and/or selection of new counsel; (c) the determination whether counsel for the Trust should file a lawsuit, and the identity of defendants in any such lawsuit; (d) whether and under what terms to settle any claims of or owned by the Trust except “repayment obligation” claims capable of being waived as provided by **Section 6** above; (e) the acceptability of any “Distribution Plan” to be proposed or instituted, including any proposed amendments thereto; and (f) any other major decision of the Trust substantially affecting the rights and duties of the Beneficiaries herein.

7.02. Procedure for Voting. Upon any occasion calling for a vote of Beneficiaries, the Trustee shall notify the Beneficiaries of the need for such a vote and the Trustee shall administer the voting process. For example, if counsel for the Trust submits a proposal to file a lawsuit on behalf of the Trust, or proposes a “Distribution Plan”, counsel for the Trust shall first prepare a written plan describing same and submit it to the Trustee. If the Trustee disagrees with said proposal, the Trustee shall return it to counsel for the Trust to be reworked for resubmission to the Trustee. If the Trustee agrees with the proposal, the Trustee shall distribute a

copy of the proposal to all Beneficiaries, along with any notes or comments the Trustee may have.

Thereafter, the Beneficiaries shall have the right to review and comment on the proposal. If the Beneficiaries reach a unanimous consensus approving the contemplated action, they shall notify the Trustee of that unanimous consensus, and the Trustee shall notify counsel. The counsel will then take the appropriate action (*i.e.*, filing a lawsuit), or, where appropriate, will submit the proposal to the Court for approval (as in the case of a distribution to Beneficiaries).

If the Beneficiaries do not reach a unanimous consensus on the proposal, the next step will depend on the extent of the disagreement among Beneficiaries:

(a) If fewer than 2/3rds of the Beneficiaries approve of the proposal (voting as determined below), it will be sent back to the Trust's counsel for additional work, to be re-proposed in accordance with the above procedure. However, where the decision concerns the selection or termination of counsel, such additional work and re-proposal will be undertaken by the Trustee.

(b) If 2/3rds or more (but less than all) of the Beneficiaries approve of the proposal (voting as determined below), the proposal will be sent back to the Trustee, who, if the Trustee deems it appropriate, shall utilize the services of a professional Mediator to resolve any outstanding issues regarding the proposal and if such efforts are not successful or not deemed appropriate, will then recommend a Special Master to the counsel for the Trust. The counsel will take steps with the court to secure the appointment of the Special Master.

The Special Master so appointed shall work with the Beneficiaries to attempt to reach a consensus on the proposal.

(c) Once a proposal has been recommended by the counsel for the Trust, approved by the Trustee, and has received an advisory vote approving (after work with any Mediator or Special Master who may have been appointed) by a 90% vote of the Beneficiaries, it shall be submitted by the Trustee for appropriate action. This action may include hiring new counsel (in the case of a vote on new counsel), discharging counsel, filing a complaint, making a distribution, etc.

7.03. One Vote Per Beneficiary. All voting (on any matter described herein calling for an advisory vote of Beneficiaries) shall be accomplished on the basis of one vote per Beneficiary listed on the "Schedule of Beneficiaries" at **Attachment 1**.

7.04. Advisory Voting. All voting by Beneficiaries called for hereunder shall be advisory in character, and shall not alter the ultimate authority hereunder reposed in the Trustee.

8. Purpose of the Trust. The purpose of the Trust is to organize and serve as a joint vehicle for determining and/or resolving all actual or potential legal claims of Beneficiaries for property damage and or consequential or residual damages that the Beneficiaries may have against any or all of the parties described in **Exhibit 4** (as it currently exists or may exist at a later date) arising out of "damage to Public Shade Trees due to natural gas leakage". Further, the purpose of the Trust is to discharge the obligations required of the Trust by Court Order or any future order of the Court.

9. Irrevocability of the Trust. The Trust shall be irrevocable. The Transferors shall not alter, amend, revoke, or terminate the Trust. The Transferors shall have no power or authority to direct the Trustee to return any of the Corpus of the Trust to the Transferors.

10. Management Of Funds and Distribution of Assets. The Trust shall manage and distribute Trust assets in accordance with the "Distribution Plan" as set forth in **Exhibit 5** and approved by the Court. It is intended that the "Distribution Plan" fairly and equitably distribute Trust assets and income to the Beneficiaries on a Pro Rata basis based on the relative values of the Beneficiaries' claims. It is intended that the "Distribution Plan" take advantage of sound investment strategies and any other sound financial planning vehicles to maximize the ability of the Trust to accomplish its purpose.

11. Termination of the Trust.

11.01. Time of Termination of the Trust. The Trust may be terminated upon the earlier of: (i) the date on which no assets remain in the Trust; or (ii) the date on which the Trust has discharged all obligations required of the Trust by the Court or any order of the Court. Whenever the Trustee determines that the Trust may be properly terminated pursuant to this provision, the Trustee may submit a petition for termination of the Trust to the Court. After reviewing the petition, the Court may approve termination of the Trust, or may order that the Trust undertake such further actions as the Court deems necessary and appropriate.

11.02. Distribution of Trust Upon Termination. Upon termination of the Trust as set forth in Article 11.01 herein, the Trustee shall liquidate any remaining assets of the Trust and distribute any such liquidated assets as directed by, and under the supervision of, the Court.

12. Appointment of Trustee and Trustee's Consent to Act.

12.01. Appointment of Trustee. The person identified in **Exhibit 1** hereto is appointed and designated as Trustee of the Trust. The Trustee is independent of each Transferor, independent of each Beneficiary, and independent of the Administrative Trustee.

12.02. Consent to Act. The Trustee, by execution of this Declaration of Trust, does hereby agree and consent to act as Trustee hereunder.

13. Express Powers of Trustee. The Trustee shall be vested with all powers necessary to effectuate the purpose of the Trust. However, before exercising these powers, the Trustee shall obtain Court approval for all material decisions affecting the trust (including, but not limited to, hiring and firing counsel as described in 13.03) or undertaking any decision that may incur significant costs or liability. These powers shall include, but not be limited to, the following:

13.01. Payment of Expenses of the Trust. The Trustee shall be empowered to incur on behalf of the Trust, and pay from the assets of the Trust, all reasonable and necessary expenses incurred by the Trustee in maintaining and administering the Trust including, without limitation, the fees and costs associated with the Administrative Trustee, investment advisors, accountants, agents, managers, attorneys, actuaries, auditors, or insurers which are incurred to maintain and administer the Trust.

13.02. Retention of Consultants. The Trustee is empowered to retain any professional, consultant or other person or entity to:

- (a) effectuate the purpose of the Trust; or
- (b) maintain and administer the Trust.

The selection of vendors and consultants shall be at the sole discretion of the Trustee.

13.03. Hiring Counsel. The Trustee is empowered to select and hire independent counsel. The Trust shall be free to select any Counsel deemed to be in the best interests of the Trust and its Beneficiaries. Counsel shall assist Trustee to effectuate the purpose of the Trust. Counsel is expressly authorized to investigate any and all legal claims on behalf of the Trust for any and all causes of actions which the Trust and/or Beneficiaries may have against any party described within **Exhibit 4** (as it currently exists or may exist at a later date). Further, Counsel is expressly authorized to commence legal action in any court of law or equity or any administrative or regulatory forum in the name of the Trust or any of its beneficiaries in the absence of a settlement of such causes of actions if, in conjunction with Trustee, Counsel deems it advisable to do so. Counsel is empowered to engage Co-counsel with the approval of the Trustee. Notwithstanding the foregoing, the Trustee is empowered, with the approval of the Court, to fire Counsel, at any time, for good cause.

13.04. Execution of Documents. The Trustee is empowered to make, sign, execute, acknowledge and deliver any documents, with or without seal and

whether or not under oath, that may be necessary or appropriate to effectuate the purpose of the Trust or to maintain and administer the Trust.

13.05. Extension of Obligations. The Trustee is empowered to renew or extend the time for performance of any obligation owed to the Trust for such periods of time and on such terms as the Trustee deems advisable.

13.06. Litigation or Other Proceedings. The Trustee is empowered to institute, conduct, defend, settle and compromise any litigation or other proceeding in any court of law or equity or any administrative or regulatory forum in the name of the Trust or any of its beneficiaries in accordance with the terms of the Trust. The Trustee may utilize legal counsel hired pursuant to Article 13.03 to carry out this power. In the case of any payments made by Transferors under Section 5(b) the Trustee is specifically empowered to execute Releases in a form approved by the Court and attached at **Exhibit 7**.

13.07. Compliance With Law. The Trustee is empowered to comply with all requirements imposed by applicable law, rule or regulation.

13.08. Discretion in Exercise of Powers. The Trustee is empowered to do any and all other things that the Trustee deems necessary or appropriate to effectuate the purpose of the Trust or to maintain and administer the Trust.

13.09. Grant of Powers Limited. The Trustee shall not be empowered to dispose of the Corpus of the Trust for less than adequate and full consideration in money or money's worth unless expressly authorized by the Court following a duly noticed petition.

13.10. Modification of The Declaration of Trust. The Trustee shall be empowered to petition the Court for modification of the provisions of this Declaration of Trust if the Trustee determines that such modifications are necessary to conform to legal and/or administrative requirements.

13.11. Request for a Special Master. The Trustee shall be empowered to petition the Court for the appointment of a Special Master.

13.12 Powers not Provided to Trustee. Notwithstanding the foregoing, the Trustee shall expressly have no power to undertake or pursue any of the functions described in or required by Sections 19 and 22 of the Trust, which shall solely be the province of the Administrative Trustee.

14. Immunity and Indemnification of Trustee.

14.01. Generally. The Trustee acts as Trustee only and not personally. All persons shall therefore look solely to the Trust, and not the Trustee personally, for compensation with respect to any contract, obligation or liability made or incurred by the Trustee in good faith. The Trustee shall be liable only for its own acts or omissions resulting from its own gross negligence or willful misconduct. The Trustee, if feasible, may purchase and maintain insurance coverage to cover any losses described herein as an expense of the Trust.

14.02. Duty to Defend, Indemnify and Hold Harmless. The Trust shall defend, indemnify and hold the Trustee harmless from and against any and all uninsured claims, liabilities, costs, damages or expenses arising from any contract, obligation

or liability made or incurred by the Trustee in good faith. Nothing in this Article 14.02 shall be construed or interpreted to limit in any way the protections and immunities, if any, afforded to the Trustee pursuant to federal and/or state statutory and common law.

15. Trustee Compensation. The Trustee shall be entitled to receive as compensation from the monetary assets of the Trust such amounts as are described in **Exhibit 2** attached hereto, and the same may be amended from time to time during the term of this Declaration of Trust. Such amendments, if any, may be requested solely by the Trustee by written application of the Trustee to the Court.

16. Successor Trustee.

16.01. Vacancy Caused by a Trustee Resignation or Removal.

(a) Trustee Resignation. The Trustee may resign at any time. The Trustee shall deliver its written resignation to the Court. The resignation shall take effect within thirty (30) days of delivery of the notice of resignation. The Trustee shall prepare a list of competent, qualified and appropriately experienced persons to serve as successor to the Trustee. The Trustee shall, by the earliest date possible, deliver to the Trustee's successor all of the Trust assets which were in the possession of the Trustee along with a complete record and inventory of all such assets.

(b) Trustee Removal. The Court may remove the Trustee on its own motion for any reason it deems appropriate or proper. Further, the Court shall remove the Trustee if it determines that the Trustee is not independent of any

Transferor, as determined under Section 468B(d)(2)(C). The removal will take effect upon the date the Court specifies. The Trustee shall, by the earliest date possible, deliver to the Trustee's successor, or another acting Trustee, all of the Trust assets which were in the possession of the Trustee along with a complete record and inventory of all such assets.

16.02. Appointment of Successor Trustee. Any vacancy in the office of Trustee shall be filled by the Court, and the Court may take into account recommendations by the Beneficiaries. Where a Trustee has resigned under Article 16.01, the Court may, but is not required to, appoint the successor Trustee from the list provided by the resigning Trustee or recommended by the Beneficiaries. The Trustee shall be an individual, and not an entity.

16.03. Acceptance of Appointment of Successor Trustee. Any successor Trustee's acceptance of appointment as a successor Trustee shall be in writing and shall be filed with the Court. The acceptance shall become effective upon receipt by the Court. The Trustee shall thereupon be considered a Trustee of the Trust without the necessity of any conveyance or instrument. Each successor Trustee shall have all of the rights, powers, duties, authority, and privileges as if initially named as Trustee hereunder. Each successor Trustee shall be exempt from any liability related to the acts or omissions of the Trustee prior to the appointment of the successor Trustee.

16.04. Preservation of Record of Changes in Trustee. A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Declaration of Trust.

17. Appointment of Administrative Trustee and Administrative Trustee's Consent to Act

17.01. Appointment of Administrative Trustee. The Trustee shall identify, appoint and designate the entity identified in **Exhibit 3** hereto as Administrative Trustee of the Trust, subject to the approval of the Court. The Administrative Trustee is independent of each Transferor, independent of each Beneficiary and independent of the Trustee. The Administrative Trustee shall be a financial institution with sufficient expertise, assets, and reputation to accomplish the powers, duties, and responsibilities granted and that will accord appropriate and reasonable security to management or administration of any of the Trust's assets by the Administrative Trustee.

17.02. Consent to Act. The Administrative Trustee, by execution of this Declaration of Trust, does hereby agree and consent to act as Administrative Trustee hereunder.

18. Administrative Trustee Provisions.

18.01 Express Powers of Administrative Trustee. The Administrative Trustee shall only have the powers to undertake and pursue the functions described in or required by Sections 19 and 22 of the Trust. The Administrative Trustee shall have no other powers.

18.02. Immunity and Indemnification. The provisions of Section 14 shall apply with "Trustee" replaced by "Administrative Trustee". Moreover, no person should look to the Trustee, in lieu of or in addition to, for compensation with respect to any contract, obligation or liability made or incurred by the Administrative Trustee in good faith.

18.03. Administrative Trustee Compensation. The Trustee shall determine the compensation paid to the Administrative Trustee. This amount shall be made known to the Beneficiaries and the Court.

18.04. Successor Administrative Trustee. The provisions of Section 16 shall apply with "Trustee" replaced by "Administrative Trustee". However, the Administrative Trustee shall be an entity, and not an individual.

19. Instructions to the Administrative Trustee. The Administrative Trustee is hereby specifically directed to do the following:

19.01. Semi-Annual Financial Reports. The Administrative Trustee shall have prepared on behalf of the Trust semi-annual financial reports describing the then remaining assets and the manner in which the assets of the Trust are then invested. The reports shall include an itemization of categories of expenses and corresponding amounts. The reports shall also include an estimate of the current market value of the invested assets of the Trust and a description of the obligations, income and expenses of the Trust. The reports shall be prepared within forty-five (45) days of the close of the previous reporting period. Copies of the reports shall be transmitted to the Court. The reports shall be prepared on a cash basis, and shall be in accordance with Generally Accepted Accounting Principles.

19.02. Additional Reporting to the Court. The Administrative Trustee shall report to the Court, verbally or in writing, with respect to any matter arising from the administration of the Trust that the Administrative Trustee deems advisable to bring to the attention of the Court. The Administrative Trustee shall report to the Court,

verbally or in writing, with respect to any matter arising from the administration of the Trust upon request of the Court.

19.03. Records. Aside from the reporting requirements set forth in the other provisions of Article 19 herein, the Administrative Trustee shall create and maintain records of the Administrative Trustee's activities arising from the Court Order, this Declaration of Trust or future orders of the Court. The records shall be created and maintained in a manner that is ordinary and customary for the obligations imposed by the Court Order or this Declaration of Trust. Copies of the records shall be provided to the Court upon its request, subject to any privileges or other protections. Any privileged or otherwise protected material shall be provided under seal to the Court for *in camera* review. Upon termination of the Trust, all privileged or otherwise protected records shall be returned to the Administrative Trustee.

19.04. Management of the Corpus of the Trust. The Administrative Trustee shall be empowered to manage the Corpus of the Trust as it deems advisable in order to effectuate the purpose of the Trust. This shall include, but not be limited to, the investment of the monetary assets of the Trust and the earnings thereon, if any, so there are adequate resources available to pay for the reasonable and necessary expenses incurred by the Trustee and the Administrative Trustee in maintaining and administering the Trust. The Administrative Trustee shall take advantage of sound investment strategies, applicable insurance programs, and any other sound financial planning vehicles to maximize the ability of the Trust to accomplish its purposes.

20. Interests in the Trust. No interest in this Trust may be assigned or transferred in any manner, other than as described in Article 20 herein, unless approved by the Court. In addition, such interests shall not be voluntarily or involuntarily subject to any type of

encumbrance, to the maximum extent allowable by law. This shall include, but not be limited to, encumbrances associated with claims of any creditor, in or outside of bankruptcy or other insolvency statutory schemes, under any federal, state or local laws. Any such interest, if any, shall be made available only upon termination of the Trust as described in Article 11 herein.

21. Rights and Obligations of Transferors. The Transferors shall have no rights or obligations with respect to the Trust.

22. Section 468b Qualified Settlement Fund.

22.01. Generally. It is the intent of the Organizers, the Court, the Releasors, the Beneficiaries and this Declaration of Trust that all steps be taken by the Administrative Trustee and the Releasors to ensure that the Trust established by the Court will qualify as, and remain, a Designated or Qualified settlement fund within the meaning of Section 468B of the Internal Revenue Code, 26 U.S.C. Section 468B, and the regulations promulgated pursuant thereto and codified at 26 C.F.R. Section 1.468B-1. Each entity(ies) identified in **Exhibit 4** (as it currently exists or may exist at a later date) attached hereto shall be severally classified as a transferor within the meaning of Treasury Regulations Section 1.468B-1(d)(1), 26 C.F.R. 1.468B-1(d)(1). The Administrative Trustee shall be classified as the administrator within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. 1.468B-2(k)(3). Accordingly, the Administrative Trustee shall elect to apply settlement fund rules, if appropriate, by filing a Section 1.468B-5(b)(2) Election.

It is further intended that the transfers to the Trust will satisfy, in all events, the test and the economic performance requirement of Section 461(h)(1) of the Internal

Revenue Code, 26 U.S.C. Section 461(h)(1), and Treasury Regulation Section 1.461-1(a)(2), 26 C.F.R. Section 1.461-1(a)(2). As such, the Transferors shall not be taxed on the income of the Trust. The Trust shall be taxed on its modified gross income, excluding the sums, or cash equivalents of things, transferred to it. In computing the Trust's modified gross income, deductions shall be allowed for, *inter alia*, administrative costs and other incidental deductible expenses incurred in connection with the operation of the Trust, including, without limitation, state and local taxes and legal, accounting, and actuarial fees relating to the operation of the Trust.

22.02. Employer Identification Number. Upon establishment of the Trust, the Administrative Trustee shall apply for an employer identification number for the Trust pursuant to Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation Section 1.468B-2(k)(4), 26 C.F.R. Section 1.468B-2(k)(4).

22.03. Relation-Back Election. If applicable, the Administrative Trustee and the Transferors shall fully cooperate in filing a relation-back election under Treasury Regulation Section 1.468B-1(j)(2), 26 C.F.R. Section 1.468B-1(j)(2), to treat the Trust as coming into existence as a settlement fund as of the earliest possible date.

22.04. Reporting Requirements. The Administrative Trustee shall cause to be filed, on behalf of the Trust, all required federal, state, and local tax returns in accordance with the provisions of Treasury Regulations Section 1.468B-2(k)(1), 26 C.F.R. Section 1.468B-2(k)(1). The Administrative Trustee may retain an independent, certified public accountant to consult with and advise the Administrative Trustee with respect to the preparation of any and all appropriate returns. The Transferors (or some other person on behalf the Transferors) shall

supply to the Administrative Trustee and to the Internal Revenue Service the statement described in Treasury Regulation Section 1.468B-3(e)(2), 26 C.F.R. Section 1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which the Transferors (or some other person on behalf of the Transferors) makes a transfer to the Trust.

22.05. Power of the Administrative Trustee. The Administrative Trustee shall be empowered to take all such actions, including such actions as may be inconsistent with those expressly set forth above, as it deems necessary to ensure that the Trust is treated as a Designated or Qualified settlement fund under Section 468B of the Internal Revenue Code, 26 U.S.C. Section 468B, and the regulations promulgated pursuant thereto and codified at 26 C.F.R. Section 1.468B-1. Further, the Administrative Trustee may request that the Trustee amend, either in whole or in part, any administrative provision of this Declaration of Trust which causes unanticipated tax consequences or liabilities inconsistent with the foregoing.

22.06. Savings Provision. Notwithstanding anything herein to the contrary, in the event that any portion of this Trust shall at any time be considered not to be in compliance with Internal Revenue Code Section 468B together with any and all Treasury Regulations and Internal Revenue Services Notices, Announcements and directives thereunder, such offending provision of this Trust shall be considered void and of no effect, without any action by any court or by the Trustee or by the Administrative Trustee. The overarching purpose of this Trust is to be in compliance with Section 468B and all administrative authority and announcements thereunder.

23. Miscellaneous Provisions.

23.01. Interpretation. As used in this Declaration of Trust, words in the singular include the plural and words in the plural include the singular. The masculine and neuter genders shall be deemed to include the masculine, feminine and neuter. The descriptive heading for each paragraph and subparagraph of this Declaration of Trust shall not affect the interpretation or the legal efficacy of this Declaration of Trust.

23.02. Notices. All notices or deliveries required or permitted hereunder shall be in writing and shall be deemed given: (i) when personally delivered; (ii) when actually received by means of facsimile transmission; (iii) when received by overnight express courier delivery; (iv) when delivered and receipted for by certified mail, postage prepaid, return receipt requested (or in the event of attempted delivery and refusal of acceptance, then on the date of the first attempted delivery). Any notice sent by facsimile transmission must be confirmed by delivery of an original or hard copy within five (5) business days following transmission.

23.03. Choice of Law. This Declaration of Trust shall be administered, governed by, construed, and enforced according to the laws of the Commonwealth of Massachusetts applicable to contracts and agreements made and to be performed therein, except that all matters of federal tax law and this Trust's compliance with Section 468B of the Internal Revenue Code and Treasury Regulations thereunder, shall be governed by federal income tax law.

23.04. Invalidity and Unenforceability. If any term or provision of this Trust shall be invalid or unenforceable, the remainder of this Declaration of Trust shall not be

affected thereby, and each remaining term and provision of this Declaration of Trust shall be valid and enforced to the fullest extent permitted by law.

23.05. Severability. If the fulfillment of any obligation imposed by this Declaration of Trust will result in a violation of law, then *ipso facto*, the obligation to be fulfilled shall be reduced by the least amount necessary to allow compliance with the law.

23.06. Entirety of Agreement. This Declaration of Trust supersedes any and all prior oral discussions and agreements with respect to the subject matter hereof. This Declaration of Trust, together with the Exhibits hereto and the Court Order, contain the sole and entire agreement and understanding with respect to the matters addressed therein.

23.07. Binding Agreement. The individuals executing this Declaration of Trust and Exhibits hereby covenant, warrant and represent that: (i) such individuals are duly authorized to execute this Declaration of Trust, (ii) this Declaration of Trust is binding, (iii) the execution of this Declaration of Trust will not result in any breach or constitute a default under any obligation, undertaking, contract, or agreement to which such individuals are a party or by which such individuals may be bound.

23.08. Counterparts. This Declaration of Trust may be executed in two or more counterparts, with the same effect as if all signatures on such counterparts appeared on one document, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23.09. Independent Legal and Tax Counsel. The individuals executing this Declaration of Trust and Exhibits have been, or have had the opportunity to be,

represented by counsel and advisors of its own selection in this matter. Further, such individuals represent that they have not relied upon any individual, nor have they relied upon the draftsmanship reflected in this Declaration of Trust. Such individuals represents that they have not acted under duress or compulsion, whether legal, economic or otherwise. Consequently, they agree that the language in all parts of this Declaration of Trust shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against anyone. **IT IS SPECIFICALLY ACKNOWLEDGED AND UNDERSTOOD THAT THIS DECLARATION OF TRUST HAS NOT BEEN SUBMITTED TO, NOR REVIEWED OR APPROVED BY, THE INTERNAL REVENUE SERVICE OR THE TAXING AUTHORITIES OF ANY STATE OR TERRITORY OF THE UNITED STATES OF AMERICA.**

23.10. Continuing Jurisdiction; Registered Agent. As specified in the Court Order, the Court shall retain full jurisdiction over the Trust for purposes of ensuring its compliance with the Court Order, this Declaration of Trust and any future order of the Court. The Trustee shall appoint either the Massachusetts Secretary of State or another specified registered agent located in the Commonwealth of Massachusetts for the purpose of personal service of process upon the Trust.

## **ORGANIZER SIGNATORIES**

IN WITNESS WHEREOF, the Organizers execute this Declaration of Trust on the date indicated below.

ORGANIZERS:

Name:

Signature:

Dated:

Name:

Signature:

Dated:

Name:

Signature:

Dated:



## TRUSTEE SIGNATORY

IN WITNESS WHEREOF, the Trustee executes this Declaration of Trust on the date indicated below.

### TRUSTEE:

Name:

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

## ADMINISTRATIVE TRUSTEE SIGNATORY

IN WITNESS WHEREOF, the Administrative Trustee executes this Declaration of Trust on the date indicated below.

### ADMINISTRATIVE TRUSTEE:

Name:

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

## BENEFICIARY SIGNATORIES

IN WITNESS WHEREOF, the Beneficiaries execute this **Massachusetts Public Shade Tree Trust** on the date indicated below and acknowledge that they have signed the Trust as their free act and deed and by their signature acknowledge and agree to the terms and conditions therein:

**A. NAME OF MUNICIPALITY:** \_\_\_\_\_

**B. ADDRESS:** \_\_\_\_\_

**C. SIGNATORY**

Printed Name of Signer: \_\_\_\_\_

Capacity: \_\_\_\_\_

Address of Signer: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

[SIGNATORIES CONCLUDE]

**APPROVAL BY THE COURT**

APPROVED BY:

**COMMONWEALTH OF MASSACHUSETTS PROBATE COURT  
FOR NORFOLK COUNTY**

IT IS SO ORDERED:

THIS \_\_\_ DAY OF \_\_\_\_\_, 2007

The Honorable \_\_\_\_\_  
JUSTICE OF THE PROBATE COURT

**EXHIBIT 1**  
**TO THE DECLARATION OF TRUST**  
**UNDER SECTION 468B OF THE INTERNAL REVENUE CODE**  
**26 U.S.C. SECTION 468B**  
**FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

**TRUSTEE**

The following person shall serve as **Trustee** to the **Massachusetts Public Shade Tree Trust**:

Name of Trustee:

Address:

**EXHIBIT 2**  
**TO THE DECLARATION OF TRUST**  
**UNDER SECTION 468B OF THE INTERNAL REVENUE CODE**  
**26 U.S.C. SECTION 468B**  
**FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

**TRUSTEE COMPENSATION SCHEDULE**

For the duration of the Trust, or until such further order of the Court, the compensation of the Trustee for the Trust shall be as follows:

1. Hourly Trustee Fee. Commencing on inception of the Trust and continuing until termination of the Trust, the Trustee shall earn a fee which shall be paid from the Corpus of the Trust in accordance with and subject to the terms and conditions of the Court Order and this Declaration of Trust. The Court, annually on January 1st of each year of the Trust, has the right to set the Trustee's hourly rate. Initially the Trustee's hourly fees will be \$100.00 per hour.

<u>Support Personnel</u>	<u>Hourly Rate</u>
Professional	\$100
Administrative	\$25

2. Trustee Costs and Expenses. In addition to the Trustee's Fees set forth in Paragraph 1 of this **Exhibit 2**, the Trustee shall be reimbursed from the Corpus of the Trust, subject to the terms and conditions of the Court Order and this Declaration of Trust, for the following reasonable charges and expenses:

(a) Routine Facsimile Transmissions. No charges for local facsimile transmissions will be allowed. Facsimile transmissions which incur long distance carrying charges shall be reimbursed at actual cost.

(b) Routine Word Processing. No charges for routine word processing shall be allowed.

(c) Photocopying. Photocopies shall be charged and reimbursed to the Trustee at the rate of \$0.20 per page.

(d) Mileage. Mileage incurred by the Trustee or its personnel in the course of discharging its obligations under the Court Order and Declaration of Trust shall be charged and reimbursed at the existing rate allowed for business deduction by the Internal Revenue Service.

(e) Computerized Legal Research. Computerized legal research charges, such as Lexis and Westlaw, shall be charged and reimbursed at actual cost.

(f) Postage and Delivery Services. Postage and delivery costs, such as Federal Express and United Parcel Service, shall be charged and reimbursed at actual cost.

(g) Travel Expenses. Travel expenses incurred by the Trustee or its personnel in the course of discharging its obligations under the Court Order and Declaration of Trust shall be charged and reimbursed at actual cost. Where available, all air travel may be by business class or equivalent. Food and lodging charges shall be reimbursed at actual cost.

(h) Miscellaneous Expenses. All other reasonable costs and expenses shall be charged and reimbursed at actual cost.

3. Annual Adjustment of Trustee Hourly Rates and Costs. Upon written notice to the Court, the Trustee may reasonably adjust the hourly rates and reimbursable costs enumerated in Paragraphs 1 and 3 of this **Exhibit 2** annually on January 1st of every calendar year from inception through and including termination of the Trust.

**EXHIBIT 3**  
**TO THE DECLARATION OF TRUST**  
**UNDER SECTION 468B OF THE INTERNAL REVENUE CODE**  
**26 U.S.C. SECTION 468B**  
**FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

**ADMINISTRATIVE TRUSTEE**

The following financial institution shall serve as **Administrative Trustee** to the **Massachusetts Public Shade Tree Trust**:

Administrative Trustee:

Address:

Officer:

Tax Identification Number:

**EXHIBIT 4**  
**TO THE DECLARATION OF TRUST**  
**UNDER SECTION 468B OF THE INTERNAL REVENUE CODE**  
**26 U.S.C. SECTION 468B**  
**FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

**IDENTITY OF TRANSFERORS**

The persons or entities listed on the attached document constitute the identity of the Transferors as provided in Section 5(b) and (c) of the Trust.

**EXHIBIT 5**  
**TO THE DECLARATION OF TRUST**  
**UNDER SECTION 468B OF THE INTERNAL REVENUE CODE**  
**26 U.S.C. SECTION 468B**  
**FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

**PLAN FOR THE MANAGEMENT AND**  
**DISTRIBUTION AND SHARING**  
**OF THE CORPUS**

The "Distribution Plan" set forth on the attached document shall determine the sound management and equitable and reasonable distribution of assets and income among the Beneficiaries in accordance with the terms of the Trust and as approved by the Court.

**EXHIBIT 6**  
**TO THE DECLARATION OF TRUST**  
**UNDER SECTION 468B OF THE INTERNAL REVENUE CODE**  
**26 U.S.C. SECTION 468B**  
**FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

**ASSIGNMENT OF CLAIMS**

The following "Assignment Of Claims" shall be executed by each of the Municipalities desiring to be included as a Beneficiary on the Schedule Of Beneficiaries at **Attachment A:**

I, \_\_\_\_\_ ("Assignor") as authorized officer of the entity, as indicated below, hereby assign and transfer to The **Massachusetts Public Shade Tree Trust** ("Assignee") all right, title and interest in any claim or claims for property damage to Public Shade Trees due to natural gas leakage that the Municipality may have against one or more parties listed in **Exhibit 4** (as it currently exists or may exist at a later date) of the Declaration of Trust for the **Massachusetts Public Shade Tree Trust**. Assignee hereby agrees to accept said assignment and transfer.

**ASSIGNOR:**

NAME:

\_\_\_\_\_  
Signature Of Assignor

Capacity: \_\_\_\_\_

Date:

**ASSIGNEE:**

**THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 7**  
**TO THE DECLARATION OF TRUST**  
**UNDER SECTION 468B OF THE INTERNAL REVENUE CODE**  
**26 U.S.C. SECTION 468B**  
**FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

**RELEASE OF CLAIMS**

The attachment to this Exhibit constitutes the "Release" of claims as provided in Section 13.06 of the Trust.

**ATTACHMENT A**  
**TO THE DECLARATION OF TRUST**  
**UNDER SECTION 468B OF THE INTERNAL REVENUE CODE**  
**26 U.S.C. SECTION 468B**  
**FOR THE MASSACHUSETTS PUBLIC SHADE TREE TRUST**

**SCHEDULE OF BENEFICIARIES**

The attachment to this Exhibit constitutes the "Schedule of Beneficiaries" as provided in Section 6(a) of the Trust.